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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,700	02/16/2001	Robert M. Szabo	6169-156	4280

40987 7590 05/20/2004

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EXAMINER

LASTRA, DANIEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,700

Applicant(s)

SZABO ET AL.

Examiner

DANIEL LASTRA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-24 have been examined. Application 09/785,700 (METHOD AND APPARATUS FOR STIMULATING COMMERCE) has a filing date 02/16/01.

Response to Amendment

2. In response to Office Action dated 11/26/03, the Applicant amended claims 1, 2, 4-7, 10, 16, 17, 19-22.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton et al (U.S. 6,611,811) in view of Granik et al (U.S. 2002/0010757).

As per claim 1, Deaton teaches:

A method of providing promotional material to consumers comprising:

establishing a computer communications session between a merchant computer system and a *third-party* remote *shopping stimulation* system (see column 127, line 61 – column 128, line 10; figure 24a, item 324; figure 19). Deaton fails to teach a third-party remote system. However, Granik teaches a third party advertisement system (see figure 1, item 25; page 3, paragraph 28; page 5, paragraph 41; page 6, paragraph 46) that target promotions to users based on users' purchases information, demographics and geographic locations (see page 2, paragraph 19; page 5, paragraphs 41 and 43). In

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Granik merchants register with an Ad replacement system (see figure 1, item 25; page 4, paragraph 31), where merchants are able to view statistics of all advertising campaigns and use this information to modify campaigns already in progress (see page 4, paragraph 32). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Deaton website server 324 (see Deaton figure 48A) would be run by a third party remote system, as the one taught by Granik (figure 1, item 25), that would target advertisements to users based on users' purchases and consumption rates, as taught by Deaton. The third party remote system would register a plurality of merchants, retailers and manufacturers that would be able to track users' shopping activities and would be able to adjust the advertisements campaigns based on said users' shopping activities.

said third-party remote shopping stimulation system reading consumer purchase information from said merchant computer system, said consumer purchase information comprising consumer identifying information and product information (see column 66, lines 14-35; column 69, lines 13-21; column 69, line 55 – column 70, line 25; column 97, line 55 – column 98, line 7);

based on said consumer purchase information, identifying one or more consumers in need of one or more products (see column 70, lines 4-25; column 90, column 100, line 30 – column 101, line 12; column 118, lines 52-65);

in said *third-party remote shopping stimulation* system, associating said promotional material corresponding to said one or more products with said identified

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consumers (see column 70, lines 4-25; column 90, column 100, line 30 – column 101, line 12; column 118, lines 52-65); and

making said promotional material available to said identified consumers using a promotional material delivery system (see column 70, lines 4-25; column 90, column 100, line 30 – column 101, line 12; column 118, lines 52-65).

As per claim 2, Deaton teaches:

The method of claim 1, said identifying step further comprising determining a product consumption rate from said consumer purchase information to identify said one or more consumers in need of one or more products (see column 70, lines 4-25; column 90, column 100, line 30 – column 101, line 12; column 118, lines 52-65). Deaton does not expressly teach "*and offering said one or more consumers equivalent, but different products*". However, column 70, lines 36-46 teaches "For example, the system might be loaded with one hundred different generic food items in the grocery store as leading indicators. For example, cola might be a leading indicator. Using these generic food items, the system can store the absolute number of generics purchased by a particular customer or the ratio of generics to non-generics, or alternatively the proportion of generic expenditures to total expenditures. This information enables the system to arrive at a picture of how price driven a particular customer is or how price motivated the customer is. This information is then used to determine how to best incent the customer". Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Deaton would determine how price driven a particular customer is and after determining a product consumption rate from

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said customer, Deaton would offer said one or more consumers equivalents, but different products, if the consumer is determine to be price driven and if the offer products are less expensive, than the leading one. This feature would increase the probability that the incentive would reach its intended target, as incentives would be adjusted based on how price driven customers are.

As per claim 3, Deaton teaches:

The method of claim 1, wherein said step of reading consumer purchase information is responsive to a merchant request (see column 70, lines 26-46; column 127, line 62 – column 128, line 10).

As per claim 4, Deaton teaches:

The method of claim 1, wherein *each* said step is *performed* responsive to detecting a business necessity in an inventory management system (see column 70, lines 26-46).

As per claim 5, Deaton teaches:

The method of claim 1, wherein said consumer purchase information is read from a purchase history database *comprising consumer purchase information for a plurality of different merchants* (see column 70, lines 4-25; column 127, lines 18).

As per claim 6, Deaton teaches:

The method of claim 1, wherein said one or more products include services (see column 138, lines 37-41).

As per claim 7, Deaton teaches:

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The method of claim 1, said product information comprising product expiration information and product identifying information *wherein said step of identifying one or more consumers in need of products is based upon the expiration information of products* (see column 70, lines 4-25; column 90; column 118, lines 52-65). Deaton does not expressly teach the expiration information of products. However, column 120, lines 55-61 teaches, "A consumption rate analysis is performed based on historical product purchases. Non-perishable products that may typically be consumed over a period of more than one week are analyzed to determine the rate in which they are consumed for each ID. This consumption rate is compared with the date of last purchased so that a prediction of next purchase may be made". Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Deaton would make a consumption rate analysis for perishable products, which typically need to be consumed in less than one week, such as milk, and would transmit incentives to customers for such perishable products, when the product expiration is due. This feature would allow the Deaton system to track perishable and non-perishable products and send corresponding incentives when the next due date to purchase a type of product arrives.

As per claim 8, Deaton teaches:

The method of claim 1, wherein said promotional material made available to said identified consumers is in electronic format (see column 127, lines 14-55).

As per claim 9, Deaton teaches:

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The method of claim 1, wherein said promotional material made available to said identified consumers is in printed format (see column 69, lines 13-21; column 71, lines 1-15).

Claim 10 contains the same limitation as claims 1 and 4 therefore the same rejection is applied.

Claim 11 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 12 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 13 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 14 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 15 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 16 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 17 contains the same limitation as claim 2 therefore the same rejection is applied.

Claim 18 contains the same limitation as claim 3 therefore the same rejection is applied.

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Claim 19 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 20 contains the same limitation as claim 5 therefore the same rejection is applied.

Claim 21 contains the same limitation as claim 6 therefore the same rejection is applied.

Claim 22 contains the same limitation as claim 7 therefore the same rejection is applied.

Claim 23 contains the same limitation as claim 8 therefore the same rejection is applied.

Claim 24 contains the same limitation as claim 9 therefore the same rejection is applied.

Response to Arguments

4. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date

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of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

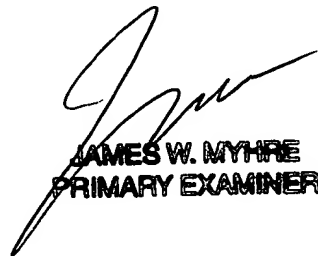
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

DL

Daniel Lastra

May 8, 2004


JAMES W. MYHRE
PRIMARY EXAMINER